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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION ONE

THE PEOPLE,

Plaintiff and Respondent,

v.

ADOLFO BOJORQUEZ,

Defendant and Appellant.

B294711

(Los Angeles County
Super. Ct. No. BA240074)

APPEAL from an order of the Superior Court of Los Angeles County, Judith L. Meyer, Judge. Affirmed.

Jared Coleman, under appointment by the Court of Appeal, for Defendant and Appellant.

No appearance for Plaintiff and Respondent.

Appellant Adolfo Ramon Bojorquez appeals from the lower court's order declining to exercise its Penal Code section 1170, subdivision (d)(1)¹ authority to resentence him. On May 31, 2019, his appointed counsel filed a brief pursuant to *People v. Wende* (1979) 25 Cal.3d 436 (*Wende*). We have reviewed the matter pursuant to *Wende* and *People v. Kelly* (2006) 40 Cal.4th 106 (*Kelly*), and have found no arguable appellate issues. We therefore affirm.

FACTUAL AND PROCEDURAL BACKGROUND

On January 8, 2003, a jury convicted Bojorquez of one count of conspiracy to commit assault with a deadly weapon under Penal Code section 245, subdivision (a)(3) and section 182. The trial court sentenced Bojorquez to a total of 25 years in state prison, comprised of the upper term of 12 years, plus two consecutive sentencing enhancements: 10 years for personal use of a firearm under section 12022.5, subdivision (a)(1), and three years for gang activity under section 186.22, subdivision (b)(1)(A). The corresponding abstract of judgment, however, reflects that Bojorquez's second enhancement was pursuant to "[section] 186.22(B)(1)"—that is, it did not indicate more specifically that the enhancement was pursuant to subdivision (b)(1)(A), which applies to any gang-related crime covered by section 186.22, as opposed to subdivisions (b)(1)(B) or (b)(1)(C), which respectively apply to serious and violent felonies covered by the section.

On August 10, 2018, the Department of Corrections (CDC) issued a letter to the sentencing judge granting "authority to resentence . . . Bojorquez pursuant to . . . section 1170, subdivision (d)" and requesting that the court "consider *People v. Le*

¹ Unless otherwise indicated, all further statutory references are to the Penal Code.

(2015) 61 Cal.4th 416 . . . which held that a trial court is precluded from imposing both an enhancement for personal use of a firearm under Section 12022.5[, subdivision](a)(1) and a serious felony gang enhancement under Section 186.22[, subdivision](b)(1)(B) when the offense qualifies as a serious felony solely because it involved firearm use.”

On October 24, 2018, the sentencing judge held a hearing in light of the CDC’s letter. In a minute order from that hearing, the court ordered the abstract of judgment be corrected to reflect that Bojorquez’s sentence had been enhanced as a nonserious, nonviolent felony pursuant to section 186.22, subdivision (b)(1)(A) specifically. Further, the court concluded that Bojoquez’s sentence did not require correction, because *People v. Le* (2015) 61 Cal.4th 416 (*Le*) applies to sentencing enhancements for serious felonies under subdivision (b)(1)(B). It therefore declined to resentence Bojorquez. Bojorquez timely appealed.

On May 31, 2019, Bojorquez’s appointed counsel filed a *Wende* brief, raising no issues on appeal from the October 24, 2018 order, and requesting that we independently review the record to determine whether the trial court committed any error. On the same day, Bojorquez’s counsel sent Bojorquez a letter explaining his evaluation of the record on appeal and his intention to file a *Wende* brief, and enclosed a copy thereof. Bojorquez’s counsel sent Bojorquez a copy of the record on appeal and informed him of his right to file a supplemental brief. On June 4, 2019, this court also sent notice to Bojorquez of his right to file a supplemental brief within 30 days from the date of the notice. Bojorquez did not file a supplemental brief within that time frame, or at any point thereafter.

DISCUSSION

Under section 1170, subdivision (d)(1), a court may, “upon the recommendation of the secretary [of the CDC] . . . recall [a] sentence and commitment previously ordered and resentence the defendant in the same manner as if he or she had not previously been sentenced, provided the new sentence, if any, is no greater than the initial sentence.” (§ 1170, sub. (d)(1).) We have reviewed the record on appeal and are satisfied that no arguable appellate issue exists regarding the court’s decision not to exercise this authority and resentence Bojorquez.

Le restricts a court’s ability to impose multiple sentencing enhancements for a “single offense, when the offense is a ‘serious felony’ under section 186.22, subdivision (b)(1)(B).” (*Le, supra*, 61 Cal.4th at pp. 419–420.) But the corrected abstract reflects that Bojorquez was not convicted of a “serious felony,” nor was his sentence enhanced under subdivision (b)(1)(B). Therefore, *Le* does not apply to him.

Finally, we are satisfied that Bojorquez’s counsel has fully complied with his responsibilities. (See *Wende, supra*, 25 Cal.3d at pp. 439–442; *Kelly, supra*, 40 Cal.4th at pp. 123–124.)

DISPOSITION

The judgment is affirmed.

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ROTHSCHILD, P. J.

We concur:

CHANEY, J.

BENDIX, J.